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American Corn and Canadian Trade Actions: One Step Forward, Two Steps Back

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On January 8 this year, the Canadian government initiated what will be one of Canada's largest trade disputes against the United States, by challenging US *Farm Bill* subsidies for corn, soy and other grain products at the World Trade Organization (WTO).[1] This case is the first of its kind launched by Canada, not only attacking existing *Farm Bill* programs but implicitly challenging any revitalized subsidy programs that might appear in *Farm Bill* replacement legislation currently before Congress.[2]

The case prompts the question of whether, and to what extent, it is part of a larger policy strategy being pursued by the Harper government. Does it reflect a principled effort to take pro-market positions in multilateral forums or, as seems more likely, is it a political response to domestic pressures?

While there have been grumblings for years by grain farmers and others about the debilitating effects of US subsidies, successive Canadian governments have, until now, resisted the pressure to bring the matter to the WTO. The corn challenge is noteworthy in that respect alone. Beyond its milestone significance for Canada-US trade relations, the corn case is shaping up as one of the WTO disputes of the decade. Over a dozen other countries, not counting the 25 WTO members that make up the European Union, have so far filed notices to join the Canadian side.

1 The magnitude of the Canadian challenge is significant. Together with attacking the actual programs under the *Farm Bill*, "The Canadian request for WTO consultations, the first step toward a panel dispute, also makes the more far-reaching charge that the US has exceeded its overall limit for trade-distorting domestic farm subsidies set at $19.1 billion in the Uruguay Round, and does so by not counting direct payments and counter-cyclical payments to corn growers under this limit. If successfully litigated, this could affect all agriculture policy in the US, as a panel could determine that both counter-cyclical and direct payments should be considered as trade-distorting amber box support." *Inside U.S. Trade*, January 12, 2006.

2 *The Farm Security and Rural Investment Act of 2002*, Public Law 107-171. The 2002 *Farm Bill* is up for renewal in 2007 and the Congress is currently reviewing each of the subsidy measures in the legislation. There are reports that many of these programs will be enlarged as the legislation progresses through the various Congressional committees.

It Started with Cotton

Canada's WTO corn complaint was given impetus by the Brazilian government's successful WTO challenge of US subsidies to cotton growers in the 2002 *Farm Bill*. Like corn, these subsidies were alleged to stimulate American production and to result in over-supply and poor prices in international cotton markets.

The Brazilian case ended up before a WTO panel that upheld the Brazilian argument, finding that an array of US cotton-subsidy programs, having raised cotton production and reduced international prices, breached WTO subsidy provisions and caused "serious prejudice" to the interests of Brazil.[3] Central to its finding was evidence of a causal connection between the benefits under each program and the effects of US cotton on world markets.[4]

Canada Follows Suit

The Brazilian success added to the pressures exerted by Canadian corn producers, and the Conservative government decided to move ahead with Canada's WTO case. However, cotton and corn are different, with different *Farm Bill* programs at issue, and Canada will have to go through the same evidentiary test to sustain the linkage between each of the impugned programs and the "serious prejudice" its domestic corn industry suffers.

A hurdle for the Canadian WTO case is that in 2006 the Canadian International Trade Tribunal found that subsidized US corn imports into Canada were not a cause of injury to Canadian corn producers.[5] Factors other than Farm Bill subsidies were the causes of low prices, according to the Tribunal, one of the main ones being that, because Canadian corn prices are determined in US dollars on the Chicago Board of Trade, declining domestic prices were mostly due to the appreciation of the Canadian currency. The Tribunal's no-injury decision may be used by the Americans to counter Canada's new WTO arguments.

So What's the Policy?

Is Canada's corn case part of a larger and more coherent trade strategy from the current government? In seeking to weed out some of the US *Farm Bill's* injurious support programs, for example, Canada's WTO challenge might represent a pursuit of market liberalization in the WTO model. The Minister of Agriculture's

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3 *United States — Subsidies on Upland Cotton*, Report of the Panel, September 8, 2004 (WT/DS267/R).

4 The panel stated, ". . . we see a strong temporal coincidence between the United States subsidies and the drop in United States prices, the drop in — and suppression of — world market prices, the increase in United States exports" (ibid., para. 7.1352). And further, "United States upland cotton producers would not have been economically capable of remaining in the production of upland cotton had it not been for the United States subsidies at issue and that the effect of the subsidies was to allow United States producers to sell upland cotton at a price lower than would otherwise have been necessary to cover their total costs" (ibid., at para. 7.1353).

5 *Unprocessed Grain Corn*, Inquiry No. NQ-2005-001, Statement of Reasons, 3 May 2005. This decision surprised many, given that American corn subsidies were estimated at as much as C$0.45 per bushel by the Canada Border Service Agency, with combined dumping margins and subsidy amounts equaling 41 percent of the US export price.

steps toward removing the Canadian Wheat Board's grain marketing monopoly, arguably, could be seen in this same trade-liberalizing light.[6]

But there are factors on the other side that elicit doubt — and even despair — that Canadian trade policy will ever be more than immediate responses to parochial pressures. What else could be concluded from the February 2007 announcement that, notwithstanding global efforts in the Doha Round to radically reduce tariffs and increase market access, Ottawa will be asking for the right to increase its protective tariffs on milk protein substitutes under the provisions of Article XXVIII of the GATT?[7]

Pressure from Canadian dairy farmers to increase these duties had been resisted by successive federal ministers of agriculture, believing it a step out of keeping with broader Canadian interests. The current government has conceded to these pressures and, by entering into Article XXVIII consultations, has indicated that it is prepared to pay compensation to Canada's trading partners to further protect Canada's dairy sector.

The decision is even more disquieting in that it comes when governments are looking for ways to kick-start the WTO talks in Geneva — giving grounds for suspicion that trade policy under the Harper government is at least as prone to local pressures and as inconsistent as under the Liberals.

Beyond milk protein, consider Canada's supply-management regime for poultry, eggs and dairy products, an industry centred in eastern Canada and which has for many years enjoyed a ring of high tariff protection around it. Canada has been increasingly isolated at the WTO in refusing to budge on supply management, being alone among the major participants defending a protective policy that no foreign government shares.[8] This rearguard position has affected Canada's influence in the Doha Round talks with regard to agriculture and in other parts of the negotiations as well.[9]

Should Canada Bite the Supply Management Bullet?

To be seen as the white knight for the corn industry may be politically advantageous for the federal government. But there is a deep-seated contradiction in fighting US *Farm Bill* programs and opening up the Canadian Wheat Board's

6 The Minister of Agriculture and Agri-Food, Chuck Strahl, issued the following statement regarding the government's plebiscite on marketing choice for barley. "Canada's New Government is committed to moving forward in providing marketing choice to Western barley farmers, and believes that a strong Canadian Wheat Board should be one of those choices." Canadian Department of Agriculture Press Release, February 7, 2007.

7 "Ottawa Moves on Dairy Protection," *Financial Post*, February 8, 2007; "Canada Plans to Address Concerns About Imports of Milk Protein Concentrates;" Agriculture and Agri-Food Canada News Release Ottawa, February 7, 2007.

8 An indication of the pressure applied to Canadian negotiators is reflected in the position of the Dairy Farmers of Canada, who argue that Canada must refuse any change whatsoever in TRQ and over-quota tariff rate for dairy products, that the current TRQ system must be maintained at all costs, and that Canada must refuse any trade-offs of any kind in supply management for the sake of a larger WTO package (see www.dairygoodness.ca.).

9 Canada's refusal to budge on supply management was manifested in an inflexible position in the Doha Round negotiations on sensitive products, where Canada was the only country to refuse to consider any rate cuts to over-quota tariffs, thereby scuttling an emerging consensus at the WTO on this issue. Canada's position resulted in a letter of complaint from the ministers of agriculture of Manitoba, Saskatchewan and Alberta to their federal counterpart, Mr. Strahl, in August 2006.

monopoly, on the one hand, while seeking additional protection for the dairy industry and keeping supply management in place for poultry, eggs and dairy products, on the other.

Moreover, Canada has been losing influence at the WTO, attributable in large part to the unwillingness of successive governments to move one inch on supply management. In 2006, the Harper government spoke of its trade objectives as including "reduction of trade-distorting domestic support," and obtaining significant market access for all Canadian agri-food products.[10] In this, some observers saw a signal that the Conservative government would pursue a focused approach to Canadian trade policy and restore some of that lost influence.

To do that would mean seriously tackling supply management and, for example, looking at phased elimination of these measures as part of a balanced quid pro quo ensuring market access abroad for Canadian farmers. Movement on supply management would secure other benefits. Not only would consumers gain from competitive pricing and choice on the grocery shelves, but a more vibrant Canadian food processing industry would emerge.[11] And showing flexibility on supply management would simultaneously strengthen Canada's hand at the WTO in Geneva.

There is no indication that the government will be altering courses in these areas, largely because of domestic politics and, for a minority government, the obvious electoral risks in taking on well-organized farmer interest groups. It is troubling that Canadian Trade Minister David Emerson retreated under pressure from agricultural interests for recently musing that Canada might have to modify its protectionist supply management policies in light of our eroding position at the world trade talks.[12]

With this kind of caving, combined with the quest for yet more protection for the dairy industry in the Article XVIII talks, one is left wondering where Canadian trade policy is really going. My conclusion is that Canada is taking one step forward and two back.

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10 Canada (2006). "Canada's International Market Access Priorities."

11 See Hart, Michael, "Great Wine, Better Cheese," C. D. Howe Institute Backgrounder, April 2005. Hart notes that the Canadian wine industry emerged stronger and more competitive with the abandonment of protectionist policies as a result of the Canada-US Free Trade Agreement ("FTA") of 1987 and argues that similar gains could accrue to the dairy and poultry sectors through a rational phase-out of supply management.

12 "Step lightly in the barnyard," Steven Chase, *Globe and Mail* Report on Business, March 7, 2007.

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